Declassified and Approved For Release 2012/11/23 : CIA-RDP89-00066R000800240019-1

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 12 1983

Mr. Joseph A. Morris
General Counsel
Office of Personnel Management
Washington, D.C. 20415

Dear Mr. Morris:

Reference is made to your letter of October 20, 1983, regarding our comments on the OPM draft bill to amend 5 U.S.C. §8312 to prohibit the payment of annuities to federal employees convicted of certain felonies. Specifically, you requested our assistance in developing a list of offenses the conviction of which would appropriately be the basis for denial of annuities.

We recommend that the amendment of 5 U.S.C. §8312 contain a general description of the types of violations which are appropriate for pension denial and authority for the Attorney General to promulgate regulations listing specific provisions of law for the categories described by the statute. We believe that this approach would be preferable to proposing a list of specific offenses for inclusion in 5 U.S.C. §8312 because of the difficulties of subjecting to the legislative process a detailed list of criminal provisions. Moreover, a regulatory approach would allow for greater flexibility in response to changing needs in the future. Assigning responsibility for promulgating regulations in this area to the Attorney General is most appropriate because the proposal is essentially a law enforcement matter.

We have enclosed a draft amendment of 5 U.S.C. §8312 which outlines in general terms the types of offenses to be included in regulations. The draft provides that the offense, which may subject the violator to pension denial, must be related to the violator's federal employment. Without such a limitation federal employees would be bound by an unfairly harsh standard of care as compared to private employees, who are not by law generally subject to pension denial for felony convictions. For this reason we do not believe that violations of State law are appropriate for inclusion in 5 U.S.C. §8312.

The enclosed draft amendment of 5 U.S.C. §8312 establishes a parallel denial of military retired pay by the Department of Defense. In addition, the draft provides for the prospective application of the new areas of pension denial so that federal

Declassified and Approved For Release 2012/11/23 : CIA-RDP89-00066R000800240019-1

Declassified and Approved For Release 2012/11/23 : CIA-RDP89-00066R000800240019-1

employees will be on notice prior to the commission of an included offense that they may be subject to the loss of pension rights which have otherwise accrued to them.

Although we believe that the enclosed draft amendment of 5 U.S.C. §8312 would be preferable to the version prepared in your office, we are, nevertheless, concerned about the effect on the plea bargaining process of any expansion of this provision. We, therefore, strongly recommend that you include a statement in any transmittal of this proposed legislation to the Congress that when a guilty plea rests in significant degree on a promise or agreement of the prosecutor, the promise must be fulfilled. The transmittals should further state that in reaching a plea agreement a federal prosecutor may agree to waive the government's right to deny the defendant his pension under 5 U.S.C. §8312. See Santobello v. New York, 404 U.S. 257 (1971). We believe it essential to urge the inclusion of these statements in committee reports that accompany this legislation, since, without such statements in the legislative history, plea bargaining in cases involving violations subject to the expanded 5 U.S.C. §8312 may be severely hampered.

We are also concerned that an expanded pension-denial authority could unfairly affect innocent survivors and beneficiaries in certain cases. Under our draft OPM and the Department of Defense would have discretion to impose pension denial following conviction of an offense listed in the regulations. Thus, even if the criteria for pension denial are met, discretion may be exercised not to impose this penalty. We believe that one of the factors OPM and Defense should weigh in exercising their discretion to impose pension denial is the impact such denial would have on innocent third parties. We urge you to include a statement to this effect in your transmittals to Congress and to recommend eventual inclusion of the statement in the relevant legislative history.

If you wish to discuss this matter further, please contact Vicki Portney, Office of Legislation, Criminal Division, at 633-4182.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Enclosure

Declassified and Approved For Release 2012/11/23 : CIA-RDP89-00066R000800240019-1